IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 4, 2010 Session

DANIEL WALKER ET AL. v. FRONTIER LEASING CORPORATION

Appeal from the Chancery Court for Loudon County
No. 11429 Frank V. Williams, III, Chancellor

No. E2009-01445-COA-R3-CV - MARCH 30, 2010

Daniel Walker and W&W Golf Management, Inc., dba Cedar Hills Golf Club ("the plaintiffs") filed this action against Frontier Leasing Corporation, demanding in their amended complaint, damages and rescission of the lease financing contract the plaintiffs had signed with Frontier's assignor, C and J Leasing Corp. The complaint attached a copy of the contract and a copy of a judgment that the plaintiffs had previously secured against C&J[1] awarding them damages and rescission of the subject contract. The complaint alleged that Frontier had full knowledge of the complaint against C&J and that Frontier took the assignment of the contract with knowledge that a judgment would be entered against C&J rescinding the contract. The complaint alleged that the plaintiffs' lessor, Royal Links USA, was an agent of both C&J and Frontier and that the agent induced the plaintiffs to sign the finance contract by misrepresentations. Frontier moved to dismiss the complaint pursuant to Tenn. R. Civ. P. 12.02 on five grounds: (1) failure to state a claim, (2) lack of personal jurisdiction over Frontier, (3) a contract provision calling for the state of Iowa to be the forum for any dispute, (4) failure to plead fraud with particularity, and (5) a "hell or high water" legal obligation on the part of the plaintiffs to perform as lessees despite any breach by Royal Links as the supplier of the leased goods. The plaintiffs were allowed to file their amended complaint before the motion was heard. The trial court granted the motion to dismiss in an order that does not state the court's reasoning. The plaintiffs appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

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[1] In various places in the record, the initials of this entity are separated by an "&" and in other places by an "and." They are one and the same.

CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

David L. Buuck, Knoxville, Tennessee, for the appellants, Daniel Walker and W&W Golf Management, Inc., dba Cedar Hills Golf Club.

Austin L. McMullen and Max Smith, Nashville, Tennessee, for the appellee, Frontier Leasing Corporation.

OPINION

I.

The agreement that is the subject of this lawsuit identifies "Royal Links USA" as the "supplier of equipment" more particularly described as "beverage . . . cart[s]." "C and J Leasing Corp" is named as lessor and the lessee is W&W Golf Management, Inc. dba Cedar Hills Golf Club. Walker signed a personal guarantee of W&W's obligations. The first paragraph of the agreement contains in bold type a choice of forum provision:

> The Parties to this lease agree that it is to be performed in Polk County, Iowa and that [the] proper place for bringing any action on this lease shall be determined by Chapter 616 of The Code of Iowa, but in any event within the Jurisdiction of Iowa Courts. This lease shall be deemed to have been made in and shall be constr[ued] in accordance with and governed by the Laws of the State of Iowa.

We will begin with the court's findings in the earlier action wherein a judgment was rendered against C&J:

> 1. Procedurally, Defendant Royal Links filed for Bankruptcy Protection in Ohio and it was non-suited as a Defendant. Additional Defendant Frontier Leasing was dismissed via a non-suit pursuant to T.R.Civ.P. Rule 41.
>
> 2. Plaintiffs W&W Golf Management, Inc., managed and operated a golf course in Loudon County, Tennessee known as CEDAR HILLS GOLF CLUB, Inc., a separate corporate entity.

3. Royal Links acted as agent for C&J Leasing in inducing Plaintiff W&W Golf Management to enter into the contracts attached to the Complaint as Exhibits A and B. Defendant, through its agent, Royal Links, appeared in and conducted business, personally in Loudon County, Tennessee. Performance of the contract was in Loudon County, Tennessee.

4. Defendants, through their common agent made fraudulent representations to Plaintiffs to induce them to sign the subject contracts. Defendants' agent fraudulently represented that Royal Links would pay to C&J Leasing sufficient money from advertising to pay a lease/purchase on certain caddy wagons bearing advertising on the Plaintiffs golf course.

5. The Plaintiffs entered into the Agreement based upon the representations of C&J Leasing and Royal Links that Royal Links would pay all of the costs of leasing on the [beverage] carts, and that after the Royal Links/C&J lease/purchase was paid, then the sum of $304.29 per month would be paid to Plaintiff for displaying advertising of Royal Links.

6. The value of the carts as represented by C&J and its agent Royal Links, the seller of the cart was $18,985.98 but the actual value was less than $1,000.

7. It was represented to Plaintiffs as an inducement to enter the contract, that the advertising income used to pay the lease cost would, for tax purposes, wash each other out. However, Plaintiff learned that since the lease had a $1.00 buyout at the end of the lease, the payments to C&J could not be treated as deductions and the payments on the lease coming from Royal Links was indeed income to the Plaintiff, with no offsetting deduction.

8. After twenty-five (25) months of the term of the Lease, Royal Links ceased to make payments on behalf of Plaintiff, as well as some fifteen hundred (1,500) other golf courses, under terms of their Agreement.

> 9. The entire scheme was represented to Plaintiffs as a "profit sharing" arrangement by and between Plaintiffs, Defendant C&J Leasing and the now bankrupt, Royal Links.
>
> 10. Plaintiffs were induced to enter the lease upon the representation of the dual agent that Royal Links would pay the lease payments for all course owners, including Plaintiffs and that the Plaintiffs would never have to "come out of pocket" for any payment to C&J. C&J bound themselves to that in allowing Defendant Royal Links to act as its agent. Defendants were not given any option as to purchasing the carts or leasing the carts from any other entity.
>
> 11. Plaintiff Daniel Walker signed a guaranty (Exhibit A) based upon the false inducements of the Defendant.
>
> 12. C&J has claimed an amount due and owing of $15,463.82. Two years after the filing of this lawsuit, C&J Leasing assigned its right to collect said amount to an entity known as Frontier Leasing who then attempted to recover that amount in an Iowa Court and avoid the consequences of this lawsuit.
>
> 13. Plaintiffs jointly owe their attorney of record for 22.5 hours of work at $200.00 per hour for a total of $4500.00.
>
> 14. Plaintiff W&W has "out of pocket" damages of $3,467.19. Plaintiff has tendered the cart back to C&J Leasing.
>
> 15. The Court finds that there has been a violation of the Tennessee Consumer Protection Act and that Plaintiffs are entitled to relief thereunder.

(Capitalization in original.)

Based on these factual findings, the court in that earlier case ordered "that the contract between W&W Golf Management, Inc. and C&J Leasing is rescinded and for naught held. Likewise the guaranty of said contract by Plaintiff Daniel Walker is rescinded and for naught held." The court also recognized the existence of the forum selection clause, but stated that "under the Tennessee Consumer Protection Act [("TCPA")], T.C.A. § 47-18-113(b), such

clauses are void as a matter of public policy and the Court holds that jurisdiction for this TCPA action is proper in Loudon County[,] Tennessee."

The complaint in the present case, as amended, makes substantially the same allegations against Frontier that were made against C&J in the previous lawsuit with the following additions. This complaint alleges that Royal Links was also acting as Frontier's agent when it committed its wrongful deeds. This complaint alleges the existence of the C&J judgment and attaches the C&J judgment as an exhibit. This complaint alleges that Frontier and C&J acted as a "tag team" with regard to the previous judgment as follows:

> During the pendency of the Loudon County lawsuit, C&J Leasing assigned its Leasing Contract to Defendant Frontier Leasing. . . .
>
> At the time of the purported assignment to Frontier, both C&J Leasing and Frontier were represented by the same attorney, Edward N. McConnell.
>
> Frontier is charged with knowledge that it was taking assignment of a contract which was being litigated in Loudon County, Tennessee, under the Tennessee Consumer Protection Act, seeking damages and rescission. In doing so, Frontier subjected itself to jurisdiction in the State of Tennessee. In documents filed in the courts of the state of Iowa, it was made clear that Frontier Leasing and C&J Leasing were very closely tied to . . . each other in the financing of the contracts referenced herein and that they relied upon a mutual agent in making misrepresentations to Plaintiff and other golf course operations in the State of Tennessee. The relationship created a "tag team" relationship which they used in regard to the Plaintiffs. The tag team scheme worked this way:
>
> a. Edward McConnell, attorney for C&J Leasing, filed suit on June 26, 2005, in Iowa asserting C&J Leasing . . . was the proper party in interest.
>
> b. Plaintiffs herein, filed suit in Loudon Count[y] Chancery Court, Docket # 10719, seeking rescission and damages.

c. C&J filed a Motion to Dismiss the Complaint. Said Motion was denied by this Court.

d. C&J, represented by Mr. McConnell, allowed its Iowa lawsuit to be dismissed.

e. Frontier, on December 12, 2006, sent notice to Plaintiffs of the assignment of the C&J contract, subject [of] the Loudon County lawsuit. . . .

f. Edward N. McConnell then filed suit in Iowa, on behalf of Defendant Frontier alleging the same cause of action he had previously filed on behalf of C&J.

g. When said lawsuit was filed in Iowa, Frontier was fully apprised, by virtue of the knowledge of its agent McConnell, that the underlying contract was subject of a lawsuit for rescission in Loudon County, Tennessee.

h. Frontier, then realizing that the underlying contract was subject to rescission and damages, made, for the first time a judicial statement that, in fact, Frontier had been the assignee since the date of the underlying contract – February 5, 2003.

i. This judicial "hopscotch" by counsel for Frontier/ C&J, was an attempt by C&J/ Frontier to avoid the declaration of this Court that the contract was rescinded under the Tennessee Consumer Protection Act.

j. Mr. McConnell, as attorney for both C&J and Frontier was served with notice of default judgment in the Loudon County case and chose not to defend on behalf of C&J, with knowledge that if the underlying contract were rescinded, Frontier could not enforce it. Frontier is charged with that knowledge.

k. Judgment of rescission and damages against C&J was entered August 19, 2008. . . .

Frontier's motion to dismiss states the following grounds:

> This action should be dismissed for failure to state a claim against Frontier Leasing and for lack of personal jurisdiction over Frontier Leasing
>
> This action should be dismissed because C and J, Walker and W&W clearly and unambiguously chose to have Iowa law apply and chose to have any action on the Equipment Lease resolved in Iowa state courts. That Equipment Lease is the "subject of this lawsuit." . . .
>
> Plaintiffs' claim for fraud should be stricken because the Plaintiffs failed to plead fraud with particularity as required by Rule 9.02, Tennessee Rules of Civil Procedure.
>
> The Equipment Lease is a finance lease, rendering Plaintiffs' obligation to Frontier Leasing enforceable through the "hell of high water" provision.

As we have indicated, the trial court granted Frontier's motion and dismissed the case with prejudice. The order of dismissal, however, does not state the reason the trial court found the motion to be well taken, and there is no transcript of the hearing on the motion.

II.

The plaintiffs raise one issue on appeal which we restate slightly as follows:

> Whether the trial court erred in dismissing the complaint pursuant to Tenn. R. Civ. P. 12.02 (6).

III.

The Supreme Court of our state has recently articulated the standards applicable to Rule 12 motions to dismiss:

> A Rule 12.02(6) motion under the Tennessee Rules of Civil Procedure seeks to determine whether the pleadings state a claim upon which relief may be granted. ***Edwards v. Allen***, 216 S.W.3d 278, 284 (Tenn. 2007). Such a motion tests only the legal sufficiency of the complaint, not the strength of the proof. The resolution of the motion is determined by an examination of

> the pleadings alone. ***Cook ex rel. Uithoven v. Spinnaker's of Rivergate, Inc.***, 878 S.W.2d 934, 938 (Tenn. 1994)(*citing* ***Wolcotts Fin. Servs., Inc. v. McReynolds***, 807 S.W.2d 708, 710 (Tenn.Ct.App.1990)). For purposes of analysis, the motion contemplates that all relevant and material allegations in the complaint, even if true and correct, do not constitute a cause of action. In considering a motion to dismiss, courts must construe the assertions in the complaint liberally; the motion cannot be sustained unless it appears that there are no facts warranting relief. ***Cook***, 878 S.W.2d at 938 (*citing* ***Fuerst v. Methodist Hosp. S.***, 566 S.W.2d 847, 848-49 (Tenn. 1978)). On appeal, all allegations of fact by the Plaintiffs must be taken as true. ***Stein v. Davidson Hotel Co.***, 945 S.W.2d 714, 716 (Tenn. 1997). Our scope of review is de novo with no presumption of correctness. ***Colonial Pipeline Co. v. Morgan***, 263 S.W.3d 827, 836 (Tenn. 2008); ***Owens v. Truckstops of Am.***, 915 S.W.2d 420, 424 (Tenn. 1996).

Highwoods Properties, Inc. v. City of Memphis, 297 S.W.3d 695, 700 (Tenn. 2009). The trial court's legal conclusions regarding the adequacy of the complaint are also reviewed without a presumption of correctness. ***Marceaux v. Thompson***, 212 S.W.3d 263, 267 (Tenn. Ct. App. 2006).

The plaintiffs' approach to this appeal is to keep it simple. They argue that they have two claims, a Consumer Protection Act claim and a claim for rescission. As to the Consumer Protection Act claim, they rely on the following language penned by now Justice William C. Koch, Jr., in ***Tucker v. Sierra Builders***, 180 S.W.3d 109, 115 (Tenn. Ct. App. 2005):

> In order to recover under the TCPA, the plaintiff must prove: (1) that the defendant engaged in an unfair or deceptive act or practice declared unlawful by the TCPA and (2) that the defendant's conduct caused an "ascertainable loss of money or property . . . ."

Id. Using the language from ***Tucker*** as a foundation, the plaintiffs assert that "the complaint with its exhibits and with the benefit of all reasonable inferences meets the minimum pleading requirements of a TCPA claim." The final link in the chain of reasoning proposed by the plaintiffs is that TCPA claims are construed liberally pursuant to Tenn. R. Civ. P. 8.01 as held in ***Harvey v. Ford Motor Credit***, 8 S.W.3d 273, 275 (Tenn. Ct. App. 1999). We read ***Harvey*** a little differently from the plaintiffs. ***Harvey*** held that while the "sufficiency of the

claims" is determined in light of the "liberal pleading standards" of Tenn. R. Civ. P. 8.01, the requirement of pleading fraud with particularity imposed by Tenn. R. Civ. P. 9.02 applies to TCPA claims based on fraud. This means that, although the allegations can be "plain and simple," they must be particular enough that the fraud can be seen on the face of the complaint.

As to the rescission claim, the plaintiffs' argument is based on two simple propositions, one of fact and one of law. Plaintiffs correctly assert that they alleged as a fact that Frontier took the assignment with knowledge of their defense. They also correctly assert that an "assignee of a non-negotiable chose in action ordinarily takes it subject to all the defenses which the obligor may have against the assignor . . ." ***Third Nat'l Bank v. Capitol Records, Inc.***, 445 S.W.2d 471, 474 (Tenn. Ct. App. 1969).

Frontier's approach in this appeal is to reassert the grounds offered in the motion to dismiss as the basis for affirming the order of dismissal. We will examine them in the order they are made in the brief.

The first argument Frontier advances is that the choice of law and forum selection clause makes Iowa the only proper forum. We note at the outset that even if Frontier is correct, this ground would only seem to justify at most a dismissal without prejudice. Frontier is correct that our courts, as a general rule, honor and enforce both choice of law and forum selection clauses in contracts. ***Credit Gen. Ins. Co. v. Ins. Serv. Group. Inc.***, No. E2007-00033-COA-R3-CV, 2007 WL 2198475 at *2 (Tenn. Ct. App. E.S., filed July 31, 2007); ***ESI Cos. v. Ray Bell Const. Co.***, No. W2007-00220-COA-R3-CV, 2008 WL 544563 at *6 (Tenn. Ct. App. W.S., filed Feb. 29, 2008). However, it could not be clearer that such contractual provisions cannot defeat the ability of a Tennessee consumer to bring an action under the TCPA within the appropriate forum in this state. Subparagraph (b) of Tenn. Code Ann. 47-18-113 (2001), which is a part of the TCPA, states, in pertinent part, as follows:

> Any provision in any agreement or stipulation, verbal or written,
>
> restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state with respect to any claim arising under or relating to the Tennessee Consumer Protection Act and related acts set forth in this title is void as a matter of public policy.

Id. Thus, if we ultimately conclude the complaint states a cause of action under the TCPA, we will be compelled to hold that the choice of law and choice of forum do not operate to bar the plainitiffs' the ability to prosecute this case in the trial court.

Frontier also argues that fraud in the inducement will not defeat a forum selection provision unless the fraud relates directly to that provision. Frontier relies on ***Sevier County Bank v. Paymentech Merchant Services, Inc.***, No. E2005-02420-COA-R3-CV, 2006 WL 2423547 (Tenn. Ct. App. E.S., filed August 23, 2006) for the proposition that fraud, even if it induces a party to enter a contract and therefore allows rescission of the contract, will not prevent enforcement of a forum selection clause in the rescinded contract unless the misrepresentation was about the forum selection clause. We are unable to read the ***Sevier County Bank*** holding as broadly as does Frontier. In ***Sevier County Bank***, "the gravamen of the . . . complaint [was] a breach of the [contract]." ***Id.*** at *5. Stated differently, the gravamen was not fraud. In the present case, the gravamen, if there is one, is fraud and violation of the TCPA. The discussion in ***Sevier County Bank*** concerning misrepresentation revolved around this court's careful consideration of all the factors identified in ***Dyersburg Machine Works, Inc. v. Rentenbach Engineering Co.***, 650 S.W.2d 378, 380 (Tenn. 1983), which determine the enforceability of a forum selection provision. One such factor is whether "the agreement *as to the place of the action* was obtained by misrepresentation, duress, abuse of economic power, or other unconscionable means." ***Sevier County Bank***, 2006 WL 2423547 at *7 (emphasis added by ***Sevier County***). We concluded in the ***Sevier County Bank*** case that "[w]e would . . . be hard pressed to conclude there was sufficient evidence of a misrepresentation regarding the forum selection clause itself based on [one] . . . conclusory statement in [one] affidavit to the effect that [the plaintiff] now believes that when the Agreement was entered into, it was [the defendant's] intent all along to breach that Agreement." ***Id.*** We do not depart from the ***Sevier County Bank*** holding in the least, but we do not see the logic in holding that a misrepresentation that wrongfully induces a party to sign a contract which justifies rescinding the contract would nevertheless leave a forum selection clause in that contract enforceable. At the very least, the wrongful inducement would arguably constitute "other unconscionable means" of securing the distant forum. *See* ***Dyersberg***, 650 S.W.2d at 380. Accordingly, we must consider whether the allegations of the complaint are sufficient to allege fraud in the inducement.

Frontier also argues that since it was not a party to the C&J judgment, the judgment is not enforceable against it. We take this as a given, and apparently so do the plaintiffs. Otherwise, we could not explain why the plaintiffs have now sued Frontier in this separate action seeking to obtain a judgment against Frontier. The real question is whether the present complaint, including its attachments, sufficiently sets forth facts to establish a nexus between Frontier and the alleged wrongful acts of Royal Links, the alleged bad actor and agent of Frontier.

Accordingly, we now consider whether the allegations in the present case state a claim for fraud and/or violation of the TCPA against Frontier. Since the alleged violation of the TCPA is the alleged misrepresentation, our analysis is the same, one for the other.

Frontier does not attack any one particular element of the claim, therefore, we will not conduct an element by element analysis. The heart of Frontier's argument is that the claim is not pleaded with enough particularity to allow it to "know 'the precise facts [it] will have to meet in framing [its] answer, and making [its] proof.' " (*Quoting* William H. Inman, *Gibson's Suits in Chancery* § 6.02(B) (8th ed. 2004)). Frontier further argues that the only misrepresentation specifically alleged is that Royal Links fraudulently stated it "would pay to the Plaintiffs sufficient money from advertising to pay a lease on certain caddy wagons bearing advertising on the Plaintiffs [sic] golf course."

We agree with Frontier that the complaint does not state a claim against it, although we do not base our holding exclusively on the lack of specificity in the complaint. Instead, we believe that even if everything the plaintiffs have pleaded with facts as opposed to conclusions is true, no wrongdoing by Frontier is shown. The problem is that the statements did not relate to anything Frontier would or would not do. Instead, they related solely to what Royal Links would do, *i.e.*, pay the plaintiffs enough money for advertising that they would not have to worry about how they would make their lease payments. The plaintiff furnishes us no authority for how Frontier becomes liable for Royal Links' misrepresentations about what Royal Links intended to do, and the authority we have found convinces us Frontier is not liable for Royal Links' alleged misrepresentations.

The only allegations in the complaint concerning agency are general at best, however, the finance contract with specific language on the subject of agency is attached to the complaint. Paragraph 4 of the finance contract specifically states that the lessor is making no warranties and, in bold print and capital letters, states, "The Equipment Supplier Is Not An Agent of The Lessor." Paragraph 15 of the contract put the lessee on notice that the written document "constitutes the entire agreement between the parties hereto and any change or modification to this Lease must be in writing and signed by the parties hereto."

We have found no Tennessee cases discussing the nature of the allegations necessary to support a claim that one person or entity was acting as the agent of another, but the general rule appears to be that agency can be plead with some degree of generality. 45 A.L.R. 2d 583, *Manner and Sufficiency of Pleading Agency in Contract Action* § 2 (1956 and cumulative supplement). However, where the pleading incorporates or attaches a document that clearly negates agency, a general allegation of agency fails. ***Id***. at §§ 2 & 9. Despite the

general allegation in the complaint that Royal Links was acting as C&J's agent, W&W is bound by its signature on the finance contract that disclaims agency. ***Webber v. State Farm Mut. Auto Ins. Co.***, 49 S.W.3d 265, 274 (Tenn. 2001). Without some explanation in the complaint as to why Walker, as guarantor of W&W's obligations under the contract, believed Royal Links was C&J's agent despite the disclaimer in the contract signed on the same day as Walker signed the guaranty, we will not infer that Walker could have reasonably believed Royal Links was obligating C&J, and its assignee, Frontier, to do something. We are not obligated to accept the plaintiffs' conclusory allegations as true or supply facts where none are alleged. ***Dobbs v. Guenther***, 846 S.W.2d 270, 273 & n.9 (Tenn. Ct. App. 1992).

Even if one party would be liable under some circumstances for misrepresentations a second party makes concerning what the second party will or will not do, that scenario is foreclosed in this present case by the unique law applicable to finance leases. The term "[f]inance lease" is defined in Tenn. Code Ann. § 47-2A-103(g)(Supp. 2009) as follows:

> "Finance lease" means a lease with respect to which:
>
> (i) the lessor does not select, manufacture, or supply the goods;
>
> (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
>
> (iii) one (1) of the following occurs:
>
> (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
>
> (B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
>
> (C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or

> modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
>
> (D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

Id.

There can be no doubt that the lease in this case fulfills the requirements of a finance lease. It identifies Royal Links as the supplier, and C&J as the lessor. It states that "all warranties made by the Supplier to Lessor, if any, are hereby assigned to Lessee for the lease term." Also, it states that "Lessee may contact the supplier(s) for information about the warranties." It is not a consumer lease; it is a commercial lease. In fact, the plaintiffs do not argue that this is not a finance lease. They seem to rest their case on their hope that we will not enforce a finance lease that was allegedly fraudulently induced. We are not ruling out the possibility that a finance lease might be rescindable for fraud on the part of the lessor, but we think it clear that this particular finance lease cannot be rescinded for *fraud concerning what Royal Links was going to do.*

The reason we cannot rescind a finance lease that relates entirely to fraud on the part of the supplier, even if it did induce the lessee to sign the contract, is that lessees must

perform finance leases "come hell or high water." ***Wells Fargo Financial Leasing v. Mountain Rentals***, No. E2007-00480-COA-R3-CV, 2008 WL 199855 at *4 (Tenn. Ct. App. E.S., filed Jan. 24, 2008). The "hell or high water" part of the UCC as codified at Tenn. Code Ann. § 47-2A-407 (2001) states, in pertinent part, as follows:

> (1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.
>
> (2) A promise that has become irrevocable and independent under subsection (1):
>
> (a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and
>
> (b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

The concept of a finance lease involves a beneficial trade-off. It encourages entities to acquire and finance machinery and equipment without worrying that the lessee will be able to stop paying and blame it on the equipment. ***Wells Fargo***, 2008 WL 199855 at *5. Upon acceptance of the goods, the lessee becomes irrevocably bound to make the payments. The lessee is not without remedy. The lessee retains a right to proceed against the supplier for any defects in the goods or wrongdoing on the part of the supplier. ***Id.*** Even if we were to apply Iowa law instead of Tennessee law, the result would be the same. *See* ***id.*** at *4 (discussing Iowa cases finding finance leases irrevocable).

In conclusion, we hold that the complaint, as amended, fails to state a claim against Frontier for either misrepresentation or violation of the TCPA. Further, without a basis for voiding the contract, there is no basis for voiding the forum selection clause.

IV.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellants Daniel Walker and W&W Golf Management, Inc. dba Cedar Hills Golf Club . The case is remanded to the trial court, pursuant to applicable law, for collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE